

From: [Broyles, Ragan](#)
To: [Smith, Monica](#)
Subject: FW: West,Texas Explosion-Important Article
Date: Friday, April 26, 2013 11:47:44 AM

FYI....Look at this from a regulatory enforcement perspective. Got this from an OLD EPA acquaintance. Don't distribute

From: email@thenation.com [mailto:email@thenation.com] **On Behalf Of** John Gustafson
Sent: Thursday, April 25, 2013 10:20 AM
To: Broyles, Ragan
Subject: West,Texas Explosion-Important Article

Message from sender:

Ragan/Steve::: Here is another article about the West, Texas incident in addition to the NY Times article. I'm in Seattle.

John

(b) (6)

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Famed EPA Whistleblower Hits Media Coverage of 'Criminal' Texas Plant Explosion

Greg Mitchell | April 23, 2013

In the past five days, millions of words have been written and spoken relating to media mistakes and failures in the aftermath of the Boston marathon bombings. So far relatively little has emerged concerning the even more deadly explosion in West, Texas, last Wednesday. But now, in an interview this week, one of the leading government “whistleblowers” of the past four decades, who still (somehow) holds his job, has sharply criticized the lack of deep media probing of the Texas disaster—and the alleged “lies” in key Reuters and *New York Times* articles.

_____ Managers of the West Fertilizer plant that ignited, killing at least fourteen (with others still missing), mainly first responders, should face a federal grand jury “but you can’t get to that if the media won’t even give people the facts—and in the case of the *Times* and Reuters, have given people false facts,” says Hugh B. Kaufman, a senior analyst at the Environmental Protection Agency since the 1970s. He also criticizes a new Huffington Post report but does praise some other reporting.

“Don’t forget, unlike Hurricane Sandy, this is a man-made disaster,” Kaufman declares. “The bottom line is: It’s a law enforcement, criminal violations issue, that resulted in needless loss of life. These guys in Texas broke the criminal statutes of the United States, but the media and Texas politicians are pretending it’s a regulatory policy issue. It’s like Alice in Wonderland—or maybe Dallas in Wonderland.”

Kaufman is a legend in whistleblower circles. When I first met him, he was, in the wake of the Love Canal toxic dump disaster of the late 1970s, exposing via the media and Congress the full extent of the chemical waste disaster around the United States, leading to the creation of the Super Fund to deal with them. (He was featured in my first book *Truth or Consequences*, about whistleblowers, in 1981.) His agitation within the agency, and creative work with hundreds of reporters and members of Congress (including the young Representative Al Gore), became the stuff of legend, as he blew the whistle on numerous other hazards and cover-ups.

This led to the widely covered attempt to fire him during the Reagan years, which instead ended up with EPA chief Rita Lavelle going to jail for perjury. Then he alerted the public to EPA misstatements on the toxic hazards for clean-up crews and residents around Ground Zero after the 9/11 attacks—and the chemicals approved by the US in responding to BP’s Deepwater Horizon oil leak in the Gulf. At the age of 70, he remains at the agency advising administrators but with no real power—after the Bush team eliminated EPA’s ombudsman—beyond his continuing efforts to get reporters interested in vital stories.

Following his usual pattern, he has contacted many journalists in the past few days about the Texas explosion, but this time “it seems editors are scared of it,” he asserts. “They either don’t want to piss off Republicans or don’t want people to know that President Obama is halfway between the center and the Republicans.” Obama has often been courageous, considering how many “nutcases hate his guts,” Kaufman observes, but he needs to be pushed by media that “have the responsibility to accurately cover important stories, like an explosion that blows up a Texas town.”

True, news outlets needed to focus on “the two Chechens who killed three people” but what about “the Christians who killed a dozen or more?”

Beyond the lack of full coverage on cable TV and the national press, Kaufman cites what he calls two glaring errors. He points to *The New York Times* [article of April 19](#) [1] which, he says, “falsely claimed that the company notified EPA that they had on hand 270 tons of the explosive ammonium nitrate. They did not. The company also falsely certified to EPA that there was no fire or explosive risk.”

Kaufman points to the document—published on the MSNBC site—that the company sent to the State of Texas, which certified that the facility stored 270 tons of the explosive ammonium nitrate, “thus proving,” in Kaufman’s words, “their self-certification to EPA violated the criminal requirements of 18 USC 1001.” The section of criminal code, he explains, “requires people, and companies, to provide truthful information to the government. It’s a felony to knowingly lie about material information.” If those numbers were sent to EPA, the feds (as we’ll see below) might have done something about it, but the company likely knew that Texas would not or could not act.

As for Reuters: [Its April 20 report](#) [2] drew wide linkage (from me, too) for its opener on that explosive material—being 1,350 times the amount of ammonium nitrate that would normally trigger DHS oversight—but further down it cited an unnamed “expert” stating that neither OSHA nor the EPA “regulate the handling or storage of ammonium nitrate. That task falls largely to the DHS and the local and state agencies that oversee emergency planning and response.”

In fact, Kaufman, points out, EPA fined the company in 2006 (OSHA had done that as far back as 1985). So the company sending wrong information to EPA really mattered.

On the other hand he offers kudos to the Associated Press for revealing that the company had admitted to EPA that the West facility did not have the mandatory safety mechanism to protect locals from fires and explosions. The company claimed it “was not handling flammable materials” and “did not have sprinklers, water-deluge systems, blast walls, fire walls or other safety mechanisms in place at the plant,” the AP reported.

Kaufman also points to a Randy Loftis story in *The Dallas Morning News* the day after the blast which, he told me, “certified that the company sent false, misleading and inaccurate information to EPA in 2011 which led to the first responders being unaware and untrained to safely handle the situation.” The plant, Loftis wrote, had told Texas regulators that emissions posed no danger without mentioning the danger of a “catastrophic” explosion (and two schools were nestled nearby).

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Many claim that, unaware of the substances they were dealing with, the firemen sprayed water which in this case only exacerbated the fires. “I can guarantee you,” Kaufman comments, “that there was not one person in the volunteer fire department trained to handle that kind of emergency. The company wanted to save money and that’s enough incentive to lie to the EPA. But if the news media doesn’t cover that, how can a U.S. attorney ask for a grand jury? Especially when all the elected officials in the region want EPA abolished.”

He criticizes [a major piece just published](#) [4] at The Huffington Post as “filled with lots of irrelevant factoids and obfuscation, without discussing the company lies. The company lied to EPA saying they only had anhydrous ammonium and no other material. This was filed with the local fire department and the company avoided spending the money for safety mechanisms, and the fire department didn’t train their employees properly, or have the right equipment.”

Late yesterday, *The Dallas Morning News* [revealed that it had filed requests](#) [5] from the Office of the Texas State Chemists seeking reports on and fines against the West facility—and for other sites in the state housing similar explosive materials. The requests were denied.

And *The Texas Tribune* yesterday [posted this debate](#) [6] about long-running Texas vs. EPA battles. In the debate, Jim Marston of the Environmental Defense Fund charged, “I believe because of the failure of state government, people are dead now.” He said Texas has the nation’s highest death rate for industrial accidents. Yesterday, Governor Rick Perry defended the state’s inspection process regarding the plant, saying he was comfortable with the level of state oversight.

Kaufman is scornful of many Texas officials’ hypocritical reaction to the disaster in the days since. “Ironically, the Texas governor and the Texas GOP congressional delegation have asked the EPA and the other federal agencies to pay for remediation,” he points out, “while blasting EPA and the feds for trying to regulate Texas businesses like the West Fertilizer Co. They have also backed cutting budgets and furloughing of employees at agencies they’ve asked to help them, such as FEMA.”

West is represented in Congress by Representative Bill Flores, who demanded that the government declare a federal disaster and send mucho money, voted against that Hurricane Sandy Disaster Relief bill. And, yes, the Koch brothers [have been very active](#) [7] in fighting regulations on fertilizer plants and sapping EPA power.

Mike Elk [has an op-ed](#) [8] at *The Washington Post* today, also hitting media coverage so far.

Why is all this important? “There’s no substantive enforcement when it comes to these places that are dangerous right now—so why are conservatives cutting the ability of the US to deal with these things?” Kaufman asks. “Unfortunately, if the national media knowingly or unknowingly ‘take a dive’ on this case, it is much harder for a mid-level civil servant to take on the Texas governor and just about all the other Texas elected officials, and to find the courage to push for a criminal grand jury—to bring about accountability, to help prevent future environmental safety catastrophes.”

Greg Mitchell is the author of [more than a dozen books](#) [9], including the new So Wrong for So Wrong, on Iraq and the media. He is the former editor of Editor & Publisher and blogs daily at [Pressing Issues](#). [10]

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Links:

[1] <http://www.nytimes.com/2013/04/19/us/huge-blast-at-texas-fertilizer-plant.html?pagewanted=2&r=0&smid=tw-share>

[2] http://www.huffingtonpost.com/2013/04/20/west-fertilizer-company_n_3121110.html?utm_hp_ref=tw

[3] <https://donate.thenation.com/sitelink>

[4] http://www.huffingtonpost.com/2013/04/22/west-fertilizer_n_3134202.html?utm_hp_ref=business

[5] <http://watchdogblog.dallasnews.com/2013/04/appeal-filed-to-ag-seeking-block-to-release-west-fertilizer-documents.html/>

[6] <http://www.texastribune.org/2013/04/22/triblive-shaw-and-martson-on-texas-vs-the-epa/>

[7] <http://m.motherjones.com/politics/2013/04/how-chemical-lobby%E2%80%99s-friends-congress-fought-keep-regulators-its-back>

[8] <http://www.washingtonpost.com/opinions/mike-elk-the-texas-fertilizer-plant-explosion->

cannot-be-forgotten/2013/04/23/48eb770c-ac26-11e2-b6fd-ba6f5f26d70e_story.html

[9] <http://bit.ly/SizeDaH>

[10] <http://gregmitchellwriter.blogspot.com/>